

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY KREMEN, ) C-98-20718-JW  
 )  
 PLAINTIFF, ) NOVEMBER 14, 2005  
 )  
 V. )  
 )  
 STEPHEN MICHAEL COHEN, ) PAGES 1-24  
 ET AL., )  
 )  
 DEFENDANTS. )  
 ----- )

**COPY**

THE PROCEEDINGS WERE HELD BEFORE  
THE HONORABLE UNITED STATES DISTRICT  
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFF: IDELL, BERMAN, SEITEL & RUTCHIK  
BY: RICHARD J. IDELL  
465 CALIFORNIA STREET  
SUITE 300  
SAN FRANCISCO, CALIFORNIA  
94104

FOR THE DEFENDANTS: THE LAW OFFICES OF JOHN GOALWIN  
BY: JOHN GOALWIN  
350 SOUTH FIGUEROA STREET  
SUITE 499  
LOS ANGELES, CALIFORNIA 90071

THE LAW OFFICES OF ROGER  
AGAJANIAN  
BY: ROGER AGAJANIAN  
THE ATRIUM BUILDING  
19200 VON KARMAN AVENUE  
IRVINE, CALIFORNIA 92612

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

1 SAN JOSE, CALIFORNIA

NOVEMBER 14, 2005

2 P R O C E E D I N G S

3  
4 (WHEREUPON, COURT CONVENED AND THE  
5 FOLLOWING PROCEEDINGS WERE HELD:)

6 THE CLERK: CALLING THE FIRST MATTER  
7 CIVIL 98-20718, GARY KREMEN VERSUS STEPHEN MICHAEL  
8 COHEN. ON FOR HEARING ON WARRANT REGARDING ORDER  
9 TO SHOW CAUSE ON CONTEMPT.

10 COUNSEL, COME FORWARD AND STATE YOUR  
11 APPEARANCE.

12 MR. GOALWIN: JOHN GOALWIN. I PAID THE  
13 FEES AND I'M ADMITTED TO THE CENTRAL DISTRICT, AND  
14 I PAID THE FEES FOR PRO HAEC VICE AND I'M HERE WITH  
15 ROGER AGAJANIAN.

16 MR. AGAJANIAN: ROGER AGAJANIAN,  
17 A-G-A-J-A-N-I-A-N.

18 THE COURT: GOOD AFTERNOON, COUNSEL.

19 AND, MR. COHEN, I PRESUME.

20 DEFENDANT COHEN: YES.

21 THE COURT: YOU ARE BEFORE THE COURT AS A  
22 RESULT OF THE COURT HAVING ISSUED A WARRANT GROWING  
23 OUT OF A CIVIL ACTION PENDING IN THE COURT AND I  
24 WAS ADVISED OF SOME TIMING THAT YOU HAD BEEN  
25 ARRESTED ON THE WARRANT AND WOULD BE BROUGHT BEFORE

15:23:30 1 THE COURT: EXACTLY. I WANT ALL OF THAT  
15:23:32 2 OUTLINED SO THAT YOU ADVISE ME WHAT IS OUTSTANDING.

15:23:38 3 MR. IDELL: SO YOU DON'T EXPECT US TO  
15:23:40 4 HAVE A DEPOSITION MEETING BY MONDAY?

15:23:46 5 THE COURT: NO, NO. IN FACT, I WANT TO  
15:23:48 6 ACKNOWLEDGE THAT IT'S REASONABLE ON YOUR PART TO  
15:23:50 7 WANT TO HAVE CERTAIN DOCUMENTS DELIVERED TO YOU  
15:23:52 8 BEFORE YOU ENGAGE IN THE DEPOSITION BECAUSE IT  
15:23:56 9 MAKES IT AN INFORMED DEPOSITION.

15:23:58 10 THE CLERK: REMAND HIM INTO CUSTODY?

15:24:06 11 MR. GOALWIN: MR. COHEN WOULD LIKE TO  
15:24:08 12 ADDRESS THE COURT.

15:24:08 13 THE COURT: MR. COHEN.

15:24:10 14 THE DEFENDANT: FIRST OF ALL, I WANT TO  
15:24:12 15 MAKE A COUPLE OF COMMENTS IF I CAN. I AM AWARE OF  
15:24:14 16 THE CONTEMPT ORDERS THAT HAVE BEEN ISSUED AGAINST  
15:24:18 17 ME AND I'M FAMILIAR WITH THE TERMS THAT THE COURT  
15:24:20 18 HAD SET AND I HAD A DUTY TO APPEAR BEFORE YOUR  
15:24:24 19 COURT ONCE I BECAME AWARE OF THAT AND I CLEARLY DID  
15:24:30 20 NOT APPEAR.

15:24:32 21 I WANT TO MAKE IT CLEAR TO THE COURT THAT  
15:24:36 22 AT THE TIME THAT I WAS SERVED WITH THIS LAWSUIT I  
15:24:38 23 WAS LIVING IN MEXICO AND I CONTINUE TO LIVE IN  
15:24:44 24 MEXICO AND I CAME TO THE UNITED STATES AND I  
15:24:48 25 PURCHASED THE HOUSE THAT, THAT MY EX-WIFE ENDED UP

15:24:52 1 WITH AND THAT HOUSE, OF COURSE, WENT TO THE  
15:24:58 2 PLAINTIFF.

15:24:58 3 I THEN MOVED BACK TO MEXICO AND I  
15:25:00 4 UNDERSTAND THAT A YEAR OR SO LATER THE COURT  
15:25:04 5 ORDERED THAT HOUSE TURNED OVER TO MR. KREMEN.

15:25:08 6 DURING THAT PERIOD OF TIME I WAS IN  
15:25:10 7 MEXICO. THIS WAS NOT A SITUATION WHERE I, I PUT MY  
15:25:14 8 THUMB UP AT THE COURT AND RAN TO MEXICO NOT TO PAY  
15:25:20 9 THE JUDGMENT.

15:25:20 10 I WAS LIVING IN MEXICO. THE OPERATIONS  
15:25:24 11 ORIGINALLY FOR SEX.COM WERE IN MEXICO AND THE WHOLE  
15:25:30 12 COMPLETE BUSINESS WAS LOCATED IN MEXICO AND I HAD  
15:25:36 13 OBLIGATIONS UNFORTUNATELY TO THE MEXICAN GOVERNMENT  
15:25:40 14 AND TO THE EMPLOYEES IN MEXICO, OBLIGATIONS WHICH  
15:25:44 15 INVOLVED CRIMINALITY RELATIVE TO THE COURT ORDERED  
15:25:50 16 ME NOT TO TRANSFER ANY FUNDS IN THIS NOVEMBER 27TH,  
15:25:56 17 2000 ORDER.

15:25:58 18 UNFORTUNATELY, YOUR HONOR, IN OUR  
15:26:00 19 BUSINESS WE WERE DOING WIRE TRANSFERS ON A DAILY  
15:26:06 20 BASIS AND WIRE TRANSFERS AS MR. IDELL MENTIONED  
15:26:08 21 WERE PREVIOUSLY ORDERED.

15:26:10 22 I WENT AND RETRIEVED TWO CASHIER'S  
15:26:14 23 CHECKS. I ALSO CONTACTED A BANK OVERSEAS. I WAS  
15:26:18 24 SUCCESSFUL IN HAVING THEM RETURN THE MONEY AND THE  
15:26:22 25 WELLS FARGO BANK RECORDS CLEARLY SHOW THAT.

15:26:24 1 I RETRIEVED TWO CASHIER'S CHECKS. I, I  
15:26:28 2 TOOK THOSE TWO CASHIER'S CHECKS AND I GAVE THEM TO  
15:26:32 3 MY ATTORNEY AND THEY WERE FORWARDED TO THE COURT.

15:26:34 4 AND PRIOR TO THAT HAPPENING, ONCE I  
15:26:38 5 BECAME AWARE OF THE COURT ORDER, I NOTIFIED  
15:26:40 6 MR. KREMEN BY PHONE THAT, THAT THE WIRE TRANSFERS  
15:26:44 7 HAD TAKEN PLACE AND I WAS IN THE PROCESS OF  
15:26:48 8 RETRIEVING THOSE FUNDS.

15:26:48 9 UNBEKNOWNST TO ME THE FIBER COMPANIES  
15:26:54 10 THAT THOSE FIVE CASHIER'S CHECKS WERE ISSUED TO  
15:26:58 11 WENT TO THE MEXICAN GOVERNMENT AND FILED CRIMINAL  
15:27:00 12 CHARGES. I WAS DETAINED.

15:27:02 13 IT WASN'T A SITUATION WHERE I JUST SAID  
15:27:06 14 I'M NOT COMING BACK TO YOUR COURT. I WAS  
15:27:08 15 PHYSICALLY DETAINED, A BAIL HAD TO BE SET AND I HAD  
15:27:14 16 PROCEEDINGS IN MEXICO.

15:27:14 17 A MEXICAN CITIZEN HAD TO PUT UP HIS  
15:27:18 18 PROPERTY AND I HAD TO PUT UP A BAIL TO GUARANTEE MY  
15:27:22 19 APPEARANCE.

15:27:22 20 I WAS PROHIBITED IN A PERIOD OF TIME OF  
15:27:24 21 NOT LEAVING MEXICO.

15:27:26 22 ON TOP OF THAT I WAS CONTACTED BY THE  
15:27:30 23 RECEIVER IN THE CASE GEORGE FISHER. I TOLD HIM  
15:27:34 24 THAT I WOULD BE MORE THAN HAPPY TO COOPERATE WITH  
15:27:36 25 HIM.

15:27:36 1 I OFFERED DEPOSITIONS TO THE, TO THE  
15:27:40 2 PLAINTIFF AND MY ATTORNEY MR. DORBAND AT THE TIME.

15:27:46 3 I KEPT GETTING SANCTIONS AND I WAS STUCK  
15:27:48 4 IN A SITUATION THAT THERE WASN'T MUCH I COULD DO.

15:27:52 5 DURING THAT PERIOD OF TIME I SUFFERED A  
15:27:54 6 HEART ATTACK AND I REQUIRED SURGERY. MY OBLIGATION  
15:27:58 7 -- WHEN MY OBLIGATION IN MEXICO ENDED I CLEARLY HAD  
15:28:02 8 A DUTY TO APPEAR BEFORE YOUR COURT. INSTEAD I  
15:28:06 9 NEEDED SOME SURGERY AND I TOOK OFF OVERSEAS TO HAVE  
15:28:10 10 THE SURGERY.

15:28:10 11 THE COURT: MR. COHEN, IT SOUNDS LIKE  
15:28:12 12 THAT THERE ARE LOTS OF EXPLANATIONS FOR VARIOUS  
15:28:14 13 PARTS OF THIS, AND AS I SAID, I'M INTERRUPTING YOU  
15:28:18 14 NOW BECAUSE THERE WILL BE AN OPPORTUNITY FOR YOU TO  
15:28:20 15 OFFER THAT.

15:28:20 16 I CAN IMAGINE HOW ANXIOUS YOU ARE TO GET  
15:28:24 17 THAT TOLD AND BUT AS I SAID I WANT IT UNDER OATH  
15:28:28 18 BECAUSE THEN IT'S --

15:28:30 19 DEFENDANT COHEN: I UNDERSTAND.

15:28:30 20 THE COURT: -- IT HAS PENALTIES THAT  
15:28:32 21 ASSURE THAT AT LEAST YOU ARE COGNIZANT TO THE  
15:28:38 22 CREDIBILITIES IMPORTANT TO THE COURT.

15:28:40 23 SO I'M GOING TO WAIT UNTIL THESE  
15:28:42 24 PROCEEDINGS THAT I'VE OUTLINED.

15:28:44 25 I ASSURE YOU, IT SOUNDS LIKE YOU'RE WELL

15:28:46 1 REPRESENTED HERE, THAT I WILL HEAR YOUR  
J 15:50 2 EXPLANATIONS AND I'LL TRY AND KEEP THIS MOVING AND  
15:28:52 3 DO IT AS QUICKLY AS POSSIBLE.  
15:28:54 4 THE DEFENDANT: THANK YOU.  
15:28:54 5 MR. AGAJANIAN: THANK YOU VERY MUCH, YOUR  
15:28:56 6 HONOR.  
15:28:56 7 THE COURT: I'LL SEE YOU AT 1:30 ON THE  
15:28:58 8 21ST.  
15:28:58 9 MR. AGAJANIAN: THANK YOU, YOUR HONOR.  
15:29:00 10 THE COURT: YOU'RE REMANDED TO CUSTODY  
15:29:02 11 PENDING THESE PROCEEDINGS.  
15:29:04 12 (WHEREUPON, THE PROCEEDINGS IN THIS  
15:29:04 13 MATTER WERE CONCLUDED.)

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15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Exhibit “B”

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY KREMEN, ET AL.,            ) C-98-20718-JW  
                                  ) )  
      PLAINTIFFS,                ) DECEMBER 4, 2006  
                                  ) )  
          V.                     ) )  
                                  ) )  
STEPHEN COHEN, ET AL.,         ) PAGES 1-44  
                                  ) )  
      DEFENDANTS.                ) )  
\_\_\_\_\_  
                                  )

THE PROCEEDINGS WERE HELD BEFORE  
THE HONORABLE UNITED STATES DISTRICT  
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: MR. IDELL & SEITEL  
BY: RICHARD J. MR. IDELL  
465 CALIFORNIA STREET  
SUITE 300  
SAN FRANCISCO, CALIFORNIA 94104

DILLON & GERARDI  
BY: TIMOTHY P. DILLON  
4660 LA JOLLA VILLAGE DRIVE  
SUITE 775  
SAN DIEGO, CALIFORNIA 92122

FOR THE DEFENDANTS: THE LAW OFFICE OF STEVE EMERY  
TEICH  
BY: STEVEN EMERY TEICH  
1390 MARKET STREET  
SUITE 310  
SAN FRANCISCO, CALIFORNIA 94102

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRP  
CERTIFICATE NUMBER 8074

1 SAN JOSE, CALIFORNIA

DECEMBER 4, 2006

2  
3 P R O C E E D I N G S

4 (WHEREUPON, COURT CONVENED AND THE  
5 FOLLOWING PROCEEDINGS WERE HELD:)

6 THE CLERK: CALLING CASE NUMBER 98-20718,  
7 GARY KREMEN VERSUS STEPHEN COHEN.

8 MR. IDELL: GOOD MORNING, YOUR HONOR.  
9 RICHARD MR. IDELL APPEARING ON BEHALF OF THE  
10 PLAINTIFF.

11 MR. DILLON: TIM DILLON ALSO ON BEHALF OF  
12 THE PLAINTIFF.

13 MR. TEICH: GOOD MORNING. STEVE TEICH  
14 APPEARING FOR THE DEFENDANT WHO IS IN CUSTODY AND  
15 HE'S BEING BROUGHT OUT.

16 THE COURT: VERY WELL. MR. COHEN HAS  
17 JOINED US NOW. THIS IS A MOTION FOR A RELEASE FROM  
18 CUSTODY.

19 MR. TEICH: YES, YOUR HONOR.

20 IF THE COURT RECALLS AT THE LAST CALLING  
21 OF THE CASE BACK IN JUNE, I THINK, 19TH, 2006 AND  
22 AT THAT HEARING THE COURT HAD INDICATED THAT, THAT  
23 IT HAD CONTEMPLATED HAVING MR. COHEN RELEASED IN  
24 THAT IT WAS DIFFICULT FOR HIM TO OBTAIN THE RECORDS  
25 THAT WOULD HAVE BEEN NECESSARY FOR HIM TO, TO SHOW

1 WILL GRANT THAT SO THAT YOU CAN TRACE HIS MOVEMENTS  
2 AROUND THE WORLD BEFORE THIS SO THAT YOU CAN  
3 DETERMINE WHETHER OR NOT HE HAS ACCOUNTS THERE, BUT  
4 THIS CONTINUING TO BE HELD IN CUSTODY, IN CUSTODY  
5 IS A QUESTION BEFORE THE COURT.

6 MR. IDELL: WELL, YOUR HONOR, I JOIN WITH  
7 MR. DILLON. I'M VERY CONCERNED THAT IF MR. COHEN  
8 IS RELEASED, IT WILL BE FUTILE TO HAVE FURTHER  
9 HEARINGS HERE BECAUSE HE WON'T RETURN AND HE WILL  
10 BE GONE AND THAT WILL BE THAT AND I THINK IT WOULD  
11 HAVE BEEN DONE ON THE BASIS OF, OF, OF THIS LETTER  
12 FROM THE BANK WHICH DOESN'T GIVE A COMPLETE, A  
13 COMPLETE SET OF INFORMATION AS TO, AS TO WHAT THAT  
14 E-MAIL IS ALL ABOUT.

15 I MEAN, ONE THING IS FOR SURE, THE  
16 E-MAILS ARE THERE UNLESS, UNLESS, UNLESS MR. COHEN  
17 WAS DRAFTING THOSE E-MAILS, BECAUSE HE WAS PLAYING  
18 A GAME, OR, OR SOMETHING ELSE, THEY HAVE TO HAVE  
19 SOME MEANING. WHY WOULD ANYBODY DO SUCH A THING?  
20 AND THE GOOGLE DECLARATION EXPLAINS QUITE CLEARLY  
21 HOW, HOW THE INFORMATION CONTAINED IN THE E-MAIL  
22 SHOWS THAT IT WAS, IN FACT, CREATED AND SENT ON  
23 THEIR SYSTEM.

24 AND SO IT HAS TO HAVE SOME, SOME MEANING,  
25 AND SO, AND SO TO ME WE ARE AT A POINT WHERE WE

1 INTEND TO APPEAR HERE BECAUSE THE FAILURE TO APPEAR  
2 IF I ORDER YOU TO BE HERE IS YET ANOTHER VIOLATION  
3 OF, OF A COURT ORDER AND SO I WOULD -- MY ORDER OF  
4 RELEASE WOULD SAY YOU ARE ORDERED TO BE HERE ON  
5 FEBRUARY 26TH AT, AT -- WELL, THIS WOULD BE A CIVIL  
6 MATTER. SO AT 9:00 O'CLOCK FOR, FOR A, FOR A, AN  
7 EXAMINATION OF, OF JUDGMENT DEBTOR.

8 AND, AND SINCE I'M, I'M ORDERING THAT  
9 HERE WITH YOU PRESENT IN COURT, IT WON'T BE ANY  
10 EXCUSE THAT YOU SOMEHOW DIDN'T UNDERSTAND THAT YOU  
11 WANTED TO PERSONALLY BE HERE, YOU HAVE TO  
12 PHYSICALLY PERSONALLY BE HERE UNLESS COUNSEL  
13 STIPULATED TO EXCUSE YOU BECAUSE LOTS CAN HAPPEN  
14 BETWEEN NOW AND THEN WHERE YOU MIGHT SATISFY THEM  
15 AS TO INFORMATION BUT ALTHOUGH THAT EXAMINATION YOU  
16 WOULD BE SWORN BY THE COURT AND BE BOUND TO ANSWER  
17 ANY QUESTIONS THAT COUNSEL MIGHT PUT TO YOU FOR  
18 THAT PURPOSE.

19 DO YOU UNDERSTAND?

20 THE DEFENDANT: YES, I DO, SIR.

21 MR. IDELL: AND, YOUR HONOR, ALONG THOSE  
22 LINES, WE DO NOT HAVE ANY ADDRESS FOR MR. COHEN.  
23 WE WOULD BE ASKED WE BE ALLOWED TO SERVE ANY PAPERS  
24 ON MR. TEICH OR WHOEVER IT IS THAT IS GOING TO BE  
25 COUNSEL FOR MR. COHEN FROM THIS DAY FORWARD SO WE

1 DON'T HAVE ANY PROBLEMS WE HAVE RUN INTO IN THE  
2 PAST WHERE MR. COHEN IS NOT IN CUSTODY TELLING HIM  
3 WE DIDN'T PROPERLY SERVE HIM OR HE DOESN'T HAVE AN  
4 ADDRESS.

5 THE STATEMENT WAS MADE EARLY TODAY THAT  
6 HE LIVES IN SAN DIEGO AND THAT'S THE FIRST WE HEARD  
7 OF THAT BECAUSE WE DON'T HAVE AN ADDRESS BUT TO GET  
8 AROUND ALL OF THAT WE WOULD ASK THAT WE BE ALLOWED  
9 TO SERVE MR. TEICH AND GOALWIN WITH ANY PAPERS TO  
10 BE SERVED ON MR. COHEN SO WE CAN DO THAT.

11 THE COURT: WHAT IS YOUR RESPONSE?

12 MR. TEICH: COULD I HAVE ONE MOMENT? I  
13 HAVE NO PROBLEM ACCEPTING SERVICE. I'LL BE IN  
14 CONTACT WITH MR. COHEN, BUT I FULLY EXPECT THAT FOR  
15 THE SUBSEQUENT PROCEEDINGS OF A CIVIL NATURE, THAT  
16 HE WILL, HE WILL HAVE A DIFFERENT ATTORNEY OR  
17 HIMSELF AND HE WILL BE HERE.

18 MY SPECIALTY IS WHAT I HAVE ACCOMPLISHED  
19 SO I DON'T WANT TO MAKE ANY MISREPRESENTATION TO  
20 THE COURT BUT I WILL CERTAINLY ACCEPT SERVICE AND I  
21 WILL BE IN CONTACT WITH MR. COHEN AND IF WE GET A  
22 NEW CIVIL ATTORNEY, HE WILL -- I WILL MAKE SURE  
23 THAT HE CONTACTS -- SUBSTITUTES IN AND IS IN  
24 CONTACT WITH THE COURT AND OTHER COUNSEL

25 THE COURT: WELL, LET ME DO IT THIS WAY,

1 I'LL CONDITION HIS RELEASE ON YOUR, ON YOUR SERVING  
2 AS, AS COUNSEL FOR PURPOSES OF SERVING ANY NOTICE  
3 ON MR. COHEN; THAT IS, SERVICE ON, ON YOUR OFFICE  
4 AT 1390 MARKET STREET IN SAN FRANCISCO WOULD BE  
5 SUFFICIENT FOR PURPOSES OF NOTICE AND SERVICE OF  
6 ANY MATTERS THAT HAVE TO BE SERVED ON MR. COHEN.

7 AND, AND, OF COURSE, HE MAY SUBSTITUTE  
8 SOMEONE ELSE BUT THAT SUBSTITUTION WOULD REQUIRE,  
9 WOULD REQUIRE AN ORDER OF THE COURT; IN OTHER  
10 WORDS, I WON'T ACCEPT THE LAWYERS AGREEING TO IT.

11 I WANT SOMEONE PHYSICALLY PRESENT IN  
12 COURT AGREEING TO NOW SUBSTITUTE, SUBSTITUTE SO  
13 THAT YOU WOULD THEN BE RELIEVED OF ORDER OF COURT.  
14 UNTIL RELIEVED, SERVICE ON YOU IS SUFFICIENT FOR  
15 SERVICE ON MR. COHEN. THE IMPORT OF THAT,  
16 MR. COHEN, IS THAT IF I ISSUE AN ORDER, AND IT'S  
17 SERVED ON MR. TEICH, THAT'S CONSIDERED SERVICE ON  
18 YOU. YOU COULD BE HELD IN CONTEMPT FOR VIOLATING  
19 AN ORDER OF THE COURT IF IT'S SERVED ON YOU AND YOU  
20 HAVE NOTICE OF IT. BY MR. TEICH STEPPING FORWARD  
21 AND ACCEPTING SERVICE ON YOUR BEHALF, THE COURT  
22 WILL REGARD THAT AS PERSONAL SERVICE ON YOU.

23 AND DO YOU UNDERSTAND THAT, SIR?

24 THE DEFENDANT: I UNDERSTAND THAT AND  
25 ACCEPT THAT.

1 THE COURT: AND DO YOU AGREE TO ALLOW  
2 MR. TEICH TO SERVE IN THAT REGARD?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: AND, MR. TEICH, YOU'RE  
5 AGREEING TO SERVE IN THAT REGARD?

6 MR. TEICH: ABSOLUTELY.

7 MR. IDELL: YOUR HONOR, THE NEXT MATTER  
8 IS THAT WE WOULD LIKE A STIPULATION THAT WE CAN  
9 SUBMIT TO YOU LETTERS ROGATORY FOR THIS OUT OF THE  
10 COUNTRY DISCOVERY THAT WE'RE GOING TO HAVE TO DO IN  
11 ORDER TO, TO GET FURTHER INFORMATION REGARDING BANK  
12 ACCOUNTS.

13 WE DIDN'T HAVE THOSE LETTERS ROGATORY  
14 PREPARED FOR TODAY AND WE WANT TO MAKE SURE THAT,  
15 THAT GOING FORWARD WE'RE NOT GOING TO HAVE ANY  
16 ISSUE OF, OF BEING ABLE TO GET THOSE LETTERS  
17 ROGATORY ISSUED.

18 THE COURT: WHAT -- YOU WON'T -- THAT'S A  
19 NORMAL CIVIL DISCOVERY PROCESS. YOU DON'T NEED A  
20 STIPULATION FOR THAT.

21 ALL YOU HAVE TO DO IS TO PREPARE THEM IN  
22 PROPER FORM.

23 MR. IDELL: AND SUBMIT THEM TO YOUR  
24 HONOR.

25 THE COURT: YES.



Exhibit “C”

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Gary Kremen,

NO. C 98-20718 JW

Plaintiff,

**ORDER GRANTING DEFENDANT'S  
APPLICATION FOR RELEASE FROM  
CUSTODY**

v.

Stephen Michael Cohen, et al.,

Defendants.

**I. INTRODUCTION**

Defendant Stephen Michael Cohen ("Cohen") brings this Application for Release from Custody.<sup>1</sup> Cohen contends that he has satisfactorily purged himself of civil contempt. The Court conducted a hearing on December 4, 2006. Based on the papers submitted to date and the oral arguments of counsel, the Court GRANTS Cohen's Application for Release from Custody and ORDERS the United States Marshals to release Cohen.

**II. BACKGROUND**

The facts of the underlying dispute, now eight years old, are well-known to all involved. The Court briefly reviews only the pertinent background:

On November 27, 2000, the Court granted Plaintiff Gary Kremen's ("Kremen") Motion for Preliminary Injunction. At that time, the Court found that Cohen had (1) improperly thwarted

<sup>1</sup> Defendant originally filed this Application ex parte. Upon receipt of the Application, the Court set an expedited briefing schedule and invited opposition from Plaintiff. The Plaintiff timely filed their opposition.

1 Kremen's efforts to obtain discovery of financial information; (2) engaged in activities designed to  
2 conceal money made from the operation of the sex.com website; and (3) transferred substantial  
3 assets to entities for the purpose of avoiding ultimate financial responsibility at the conclusion of the  
4 litigation. (Order Granting Motion for Preliminary Injunction at 2, hereafter, "PI Order," Docket  
5 Item No. 440.) The Court ordered Cohen, *inter alia*, to: (1) return \$25 million, plus all revenue  
6 generated from sex.com between November 27, 2000 and the entry of final judgment in the action,  
7 to the United States to be held by the Court pending final judgment; (2) within three weeks, provide  
8 a full accounting of the sex.com domain site operation; and (3) within seven days, to sign all waivers  
9 to the release of tax returns, bank account records, and FOIA waivers for all defendants between  
10 1995 and the present. (PI Order at 3-5.)

11 Following the issuance of the preliminary injunction, Kremen alerted the Court that  
12 Defendants appeared to be violating the preliminary injunction in several respects, including (1)  
13 transferring funds in excess of \$1 million; (2) failing to deposit the required money with the Court;  
14 (3) failing to sign timely or complete waivers; and (4) failing to submit audits or submitting  
15 incomplete audits. (Order Holding Defendants in Civil Contempt at 3, hereafter, "Contempt Order,"  
16 Docket Item No. 541.) On February 7, 2001, the Court issued an Order to Show Cause why  
17 Defendants should not be held in contempt of court. (See Docket Item No. 498.) On February 12,  
18 2001, the Court ordered Defendants held in contempt, for a related failure to appear at Plaintiff's  
19 counsel's office to sign various releases. (See Docket Item No. 512.). On February 28, 2001, no  
20 Defendant appeared at the hearing on the Court's February 7 Order to Show Cause. (Contempt  
21 Order at 3.) Defense counsel presented an unsubstantiated claim that Cohen was under legal  
22 restraint in Mexico, which the Court disregarded due to improper authentication. Id.

23 On March 2, 2001, the Court ordered Defendants held in civil contempt and issued a warrant  
24 for Cohen's arrest. (Contempt Order at 5-6.) As additional sanctions, the Court ordered that  
25 Defendants were to be precluded from offering any evidence concerning the income and expenses  
26 generated in connection with sex.com, and the alleged bona fide transfer of the domain name  
27  
28

1 sex.com from Cohen or any other defendant to any other entity. Moreover, the Court found  
2 established for purposes of the action that Defendants Ynata, OFIL, Sandman, and "any other  
3 Cohen-affiliated entity connected in any way with the domain name sex.com, are sham entities and  
4 are, as a matter of fact and law, the alter-egos of Cohen and the alter-egos of one another." Id.  
5 Subsequently, on April 3, 2001, judgment was entered for Kremen and against Defendants in the  
6 amount of \$65 million. (See Docket Item No. 596.)

7 Cohen was arrested by the United States Marshal on October 27, 2005. He is currently  
8 incarcerated in the Santa Clara County Main Jail. Between October 2005 and June 2006, the Court  
9 held monthly status conferences regarding the status of Cohen's contempt. At issue during the last  
10 status conference in June 2006 was whether Cohen had, in October 2005, directed the Nordea Bank  
11 of Lithuania to transfer approximately \$4.1 million USD to the Deutsche Bank in the name of  
12 Mexico Lending, an affiliated entity of Cohen's. Both sides have presented evidence on this  
13 question.

14 Kremen has presented the following evidence:

15 On December 12, 2005, Kremen subpoenaed Google to request information relating to  
16 Cohen and his known related or affiliated entities. Cohen signed a waiver to allow Kremen to  
17 access his "gmail," (Google electronic mail) account. In August 2006, Google responsively  
18 produced documents relating to the scohen15@gmail.com account. (Declaration of Nadya Y.  
19 Spivack in Support of Plaintiff's Opposition to Defendant's Ex Parte Application for Release from  
20 Custody or in the Alternative an Expedited Hearing Date ¶ 3, hereafter, "Decl. Spivack," Docket  
21 Item No. 1235.) Two emailss were sent from scohen15@gmail.com to info@nordea.lt on October 4,  
22 2005 and October 16, 2005. (Decl. Spivack ¶ 4.) The emails contained an attached memo, which  
23 stated the following:

24 To: Nordea Bank Lithuania  
25 From: Stephen M. Cohen  
26 CODE: MAVERICK3452  
27  
28

1 Date: October 28, 2006<sup>2</sup>  
 2 To: Hans Dizengof  
 3 Re: WIRE TRANSFER

4 Dear Hans:

5 You are authorized to send a wire in the amount of \$3,476,000.00 Euros to the  
 6 "DEUTSCHE BANK TRUST COMPANY.

7 This information listed on my list as A10

8 Please list the sender as Mexico Lending

9 SEND ONLY through SWIFF and PLEASE do not send these funds through the  
 10 United States or through a correspondent bank in the United States.

11 I received the new credit cards via DHL and I thank you for your assistance. Please  
 12 deduct these credit card bills each month from this account.

13 I should be back in Europe in three weeks and look forward to talking to you again.

14 Thanks,

15 Stephen M. Cohen

16 +52 664 648-3633

17 (Decl. Spivack, Exs. 1, 2.) According to Google, both the October 4 and the October 16 emails were  
 18 sent from Internet Protocol ("IP") address number 209.205.192.8. (Declaration of Edmond Choi ¶¶  
 19 6-7, 10-11, hereafter, "Decl. Choi," Docket Item No. 1236.) An ARIN WHOIS Database Search for  
 20 that IP address lists Pacnet S.A. de C.V. as the owner. (Decl. Spivack ¶ 9.) During October 2005,  
 21 WLCOM controlled the IP netblock of 209.205.192.1 - 209.205.192.152, and identified  
 22 209.205.192.8 as an "in house" IP address used by employees and staff of WLCOM. (Decl. Spivack,  
 23 Ex. 6.) Cohen maintained an office at WLCOM's facility prior to his arrest, and typically worked  
 24 from late at night to early in the morning. (Decl. Spivack, Ex. 7, 25:25-26:3, Ex. 8, 31:16-21, 39:4-  
 25 20.) The two emails in question were sent at 2:54 AM and 5:59 PM, respectively. (Decl. Choi, Exs.  
 26 A, B.)

27 Cohen has presented the following evidence:

28 Cohen testified extensively on these matters at his September 29, 2006 deposition. With  
 respect to Nordea Bank in Lithuania and Deutsche Bank, he stated that he had never had an account  
 at either bank, knew no one at either bank, and had not received credit cards from either bank. (Ex  
 Parte Application for Release from Custody or in the Alternative An Expedited Hearing Date Ex. D

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<sup>2</sup> The date of Cohen's memo does not match the date of the email because Cohen used an  
 automatic date function, such that the document will adjust the date to whatever date the document  
 is opened. (Decl. Spivack ¶ 7.)

1 at 465:21-466:10, hereafter, "Ex Parte Application," Docket Item No. 1226.) Cohen stated that the  
 2 "gmail" account scohen15@gmail.com was opened to receive and store large documents because it  
 3 provided a significant amount of free space. (Ex Parte Application, Ex. D at 598:25-599:8.) He  
 4 provided the password to WLCOM employees, a "couple of [his] friends," and possibly his daughter,  
 5 Jhuliana Cohen. (Ex Parte Application Ex. D, 596:17-598:24.)

6 Cohen admitted to using the password "maverick" in the past, but stated that he had never  
 7 used "maverick3542." (Ex Parte Application Ex. D at 601:15-18.) He testified that he had never  
 8 received a DHL letter or a credit card from Nordea Bank. (Ex Parte Application, Ex. D at 603:11-  
 9 18.) Cohen has presented a certification from the Lithuanian Branch of the Nordea Bank which  
 10 states in pertinent part as translated into English:

11 We hereby inform that **Mr. Stephen Michael Cohen** and **Mexico Lending** does not  
 12 have and never had any bank account with Nordea Bank Finland Plc Lithuanian  
 13 Branch. A money transfer of EUR 3,746,000 from Nordea Bank Finland Plc  
 14 Lithuanian Branch to Deutsche Bank has not been made in October 2005.

15 (Ex Parte Application Ex. H.) Cohen further submitted evidence that no "Hans Dizengof" was  
 16 employed by Nordea Bank's Lithuania Branch. (Ex Parte Application Ex. I.)

### 17 III. STANDARDS

18 Whether contempt is civil or criminal is determined by the purpose of the contempt sanction.  
 19 A civil contempt sanction "is intended to coerce the contemnor to comply with the court's orders in  
 20 the future, and the sanction is conditioned upon continued noncompliance." In contrast, a criminal  
 21 contempt sanction "is intended to punish past conduct, and is imposed for a definite amount or  
 22 period without regard for the contemnor's future conduct." Richmark Corp. v. Timber Falling  
Consultants, 959 F.2d 1468, 1481 (9th Cir. 1992).

23 The standard for finding a party in civil contempt is as follows: the moving party has the  
 24 initial burden to show by clear and convincing evidence that the contemnor violated a specific,  
 25 definite Court order. The burden then shifts to the contemnor to demonstrate why he or she was  
 26 unable to comply. Federal Trade Comm'n v. Affordable Media, LLC, 179 F.3d 1228, 1239 (9th Cir.  
 27  
 28

1 1999). A contempt proceeding does not "open to reconsideration the legal or factual basis of the  
 2 order alleged to have been disobeyed and thus become a retrial of the original controversy." United  
 3 States v. Rylander, 460 U.S. 752, 756-57 (1983). This is because "[t]he procedure to enforce a  
 4 court's order commanding or forbidding an act should not be so inconclusive as to foster  
 5 experimentation with disobedience." Id.

6 A defendant may assert a present inability to comply with the order in question; where  
 7 compliance is impossible, neither the moving party nor the court has any reason to proceed with a  
 8 civil contempt action. Id. (citing Maggio v. Zeitz, 333 U.S. 56, 75-76 (1948)). The defendant bears  
 9 the burden of production. Id. (internal citations omitted). A mere assertion of inability to comply is  
 10 insufficient; rather, the party asserting impossibility as a defense must show "categorically and in  
 11 detail" why he or she is unable to comply. Affordable Media, 179 F.3d at 1241.

#### 12 IV. DISCUSSION

13 In its March 2, 2001 Order, the Court directed that Cohen be held in custody until he  
 14 performs the following four actions:

- 15 a) return[s] to the United States and deposit[s] with the Court \$25,000,000 or  
 16 such lesser sum as he shows is warranted by his economic circumstances;
- 16 b) return[s] to the United States all revenue generated from sex.com;
- 17 c) provide[s] a full accounting of the sex.com domain name operation;
- 17 d) effect[s] the turnover of \$1.1 million in bank funds to foreign accounts after  
 18 being ordered by the Court not to transfer any such funds.

19 (March 2, 2001 Order at 6.) The Court is now satisfied that Cohen has complied with these  
 20 conditions to the best of his ability. Cohen has repeatedly testified that he has no further funds to  
 21 pay and is not in a position to locate any further documents while in jail. (See, e.g., Ex Parte  
 22 Application, Ex. D at 585:7-14, 627:8-629:7.) The Court is satisfied that Cohen has provided an  
 23 accounting of assets to the extent that he is able from jail. (Ex Parte Application, Ex. F.) Lastly,  
 24 Cohen contends that he made a bona fide attempt to recover the more than one million dollars that  
 25 he wire transferred at the time of the Court's preliminary injunction of November 27, 2000, but that  
 26 his efforts were stymied by the Mexican authorities. (See, e.g., Ex Parte Application at 9.) Cohen  
 27  
 28



1 has not offered adequate evidence in this regard; however, the Court finds that holding Cohen in  
 2 prison at this point would do nothing to effect the turnover of these funds six years after they were  
 3 transferred.

4 Kremen has provided no evidence to rebut Cohen's contentions. Specifically, Kremen's  
 5 opposition is filled with unsupported conclusory statements and speculation. Aside from the two  
 6 emails described above, Kremen has provided no evidence that (1) Cohen actually had or has a bank  
 7 account with Nordea Bank in Lithuania; (2) Cohen actually had or has a bank account with Deutsche  
 8 Bank; (3) any bank actually received the emails purportedly sent by Cohen in October 2005; (4) any  
 9 transfer of funds, let alone a transfer of nearly \$3.5 million Euros, took place.<sup>3</sup> Indeed, in the months  
 10 since Cohen has been incarcerated, Kremen has uncovered *no* significant evidence that Cohen has  
 11 outstanding funds in previously unknown bank accounts, or any other outstanding assets. Instead,  
 12 Kremen invites the Court to join him in speculating where Cohen's allegedly hidden assets,  
 13 accounts, and personal belongings might be:

14 The fact that Plaintiff is not able to confirm the account information at Nordea Bank  
 15 is due to the fact that the account is not under Cohen's own name. The releases  
 16 Cohen provided to Plaintiff do not release accounts held in the name of his wife,  
 17 daughters, other individuals or entities that Cohen likes to use. The purported  
 18 declaration from Nordea Bank that Cohen provides to this Court states that Cohen  
 19 does not maintain an account – but fails to provide a list of all of his other alter ego  
 20 and affiliated entities – several of which likely remain unknown to Plaintiff or anyone  
 21 other than Cohen himself.

22 ...

23 Despite Cohen's claims of ignorance about his personal belongings, Plaintiff is  
 24 certain they reside with Cohen's wife, Rosa Cohen in Mexico, that Cohen knows  
 25 about his documents whereabouts and that he is behind his documents disappearance.  
 26 [sic] ... The Court will also recall that at a hearing in this matter in March 2006,  
 27 Cohen's attorney was able to produce Cohen's cancelled passport delivered to him by  
 28 Rosa Cohen. It is no stretch of the imagination to believe she maintains his other  
 documents until he is released.

...

Kremen is informed and believe that Cohen uses and continues to use [named friends,  
 family members, and attorneys], among others, and enlists their assistance in

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<sup>3</sup> Under the circumstances, it is wholly unclear who sent the emails in question and who, if anyone, received it. These questions are unimportant, however, in the absence of any evidence that the 3.5 million Euros in question exist.



1 conferencing bankers and third parties in order to effectuate the transfer of assets in  
2 violation of this Court's orders.

...

3 Kremen is informed and believed that Cohen actively harassed and threatened his  
4 wife, Rosa Cohen, to prevent the completion of the settlement agreement [relating to  
5 various properties in Mexico.] Kremen is further informed and believes that Cohen  
actively worked with his Mexican attorney, Gustavo Cortez, to fraudulently file a lien  
on the real properties and thwart any efforts at transferring the properties.

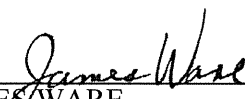
6 (Plaintiff's Opposition to Defendant's Ex Parte Application for Release From Custody or in the  
7 Alternative an Expedited Hearing Date at 8, 10-13, Docket Item No. 1232.) The Court declines this  
8 invitation. Cohen has been incarcerated for more than one year, during which time Kremen has  
9 failed to locate evidence of hidden bank accounts or other assets. Under these circumstances, the  
10 only purpose of Cohen's continued incarceration would be punitive—an impermissible purpose for  
11 civil contempt sanctions. Accordingly, the Court finds it proper to order Cohen's release from  
12 prison.

### 13 V. CONCLUSION

14 The Court GRANTS Cohen's Application for Release from Custody with the following  
15 conditions:

- 16 1) Cohen shall appear on **February 26, 2007 at 9 AM** for an examination of  
17 judgment/debtor satisfaction.
- 18 2) Service of papers upon Steve Teich, Cohen's current counsel, shall be deemed  
19 effective service upon Cohen. If Cohen should wish to substitute attorney,  
20 substitution must be approved by the Court. The motion for substitution of attorney  
21 shall be noticed in accordance with the Civil Local Rules of the Court.

22  
23 Dated: December 5, 2006

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Chad S. Hummel [chummel@manatt.com](mailto:chummel@manatt.com)  
3 Christopher L. Wanger [cwanger@manatt.com](mailto:cwanger@manatt.com)  
4 David Henry Dolkas [ddolkas@mwe.com](mailto:ddolkas@mwe.com)  
5 George G. Weickhardt [gweickhardt@ropers.com](mailto:gweickhardt@ropers.com)  
6 Glen H. Isaacs [invalidaddress@invalidaddress.com](mailto:invalidaddress@invalidaddress.com)  
7 Jack S. Yeh [jyeh@manatt.com](mailto:jyeh@manatt.com)  
8 James M. Wagstaffe [wagstaffe@kerrwagstaffe.com](mailto:wagstaffe@kerrwagstaffe.com)  
9 John P. Kern [jkern@manatt.com](mailto:jkern@manatt.com)  
10 Karl Stephen Kronenberger [karl@kronenbergerlaw.com](mailto:karl@kronenbergerlaw.com)  
11 Patricia De Fonte [Patricia.DeFonte@idellseitel.com](mailto:Patricia.DeFonte@idellseitel.com)  
12 Richard J. Idell [richard.idell@idellseitel.com](mailto:richard.idell@idellseitel.com)  
13 Steve Emery Teich [steve.teich@sbcglobal.net](mailto:steve.teich@sbcglobal.net)  
14 Terri R Hanley [law@terrihanley.com](mailto:law@terrihanley.com)

9 **Dated: December 5, 2006**

**Richard W. Wieking, Clerk**

By: /s/ JW Chambers

**Elizabeth Garcia**  
**Courtroom Deputy**